

UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
v.)	CIVIL ACTION NO.
)	
AGP CORN PROCESSING, INC.)	
)	
Defendant.)	

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges:

NATURE OF ACTION

1. This is a civil action brought against AGP Corn Processing, Inc. ("AGP" or "Defendant"), pursuant to Section 113(b) of the Clean Air Act , 42 U.S.C. § 7413(b), for alleged environmental violations at an ethanol plant owned and operated by AGP in Hastings, Nebraska. As set forth below, Defendant has been and is in violation of EPA's regulations implementing the following Clean Air Act statutory and regulatory requirements applicable to the ethanol industry: Part C of Title I of the Clean Air Act, 42 U.S.C. § 7470-7492, Prevention of Significant Deterioration ("PSD"), 40 C.F.R. § 52.21; New Source Performance Standards ("NSPS"), 40 C.F.R. Part 60, Subparts Kb, and VV; National Emission Standards for Hazardous Air Pollutants ("NESHAP"), 40 C.F.R. Part 63, pursuant to Section 112(g) of the Clean Air Act; and the Nebraska state implementation plan ("SIP") which incorporates and/or implements the above-listed federal regulations.

2. The United States seeks an injunction ordering Defendant to comply with the above statutes and the laws and regulations promulgated thereunder, and civil penalties for past and ongoing violations.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355; and Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b).

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(c) and Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), because AGP is located and doing business in this District.

NOTICE TO STATE

5. Actual notice of the commencement of this action has been given to the State of Nebraska as required under Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b).

DEFENDANT

6. The Defendant is AGP Corn Processing, Inc., a Nebraska corporation that is wholly owned by Ag Processing, Inc., a cooperative. AGP owns and operates a chemical process plant for the production of ethanol in Hastings, Nebraska. AGP began production of ethanol at its Hastings, Nebraska plant in April of 1995. AGP receives whole corn and milo that is milled, heated, and fermented. After fermentation, the raw product is distilled to produce ethanol. Distillation also separates the liquid ethanol from the meal, which AGP may dry or sell as wet mash for animal feed.

7. The Defendant is a "person" as defined in Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e), and the federal and state regulations promulgated pursuant to the Clean Air Act.

8. The ethanol manufacturing process at the Defendant's ethanol plant results in emissions of significant quantities of regulated air pollutants, including nitrogen oxides ("NOx"), carbon monoxide ("CO"), particulate matter and particulate matter at or below 10 microns ("PM" and "PM₁₀"), volatile organic compounds ("VOCs") and hazardous air pollutants ("HAPs"). The primary sources of these emissions are the feed dryers, fermentation units, distillation units, gas boilers, the cooling cyclone, ethanol load-out systems, and fugitive dust emissions from plant operations, including roads.

STATUTORY AND REGULATORY BACKGROUND
CLEAN AIR ACT REQUIREMENTS

9. The Clean Air Act establishes a regulatory scheme designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Clean Air Act, 42 U.S.C. § 7401(b)(1).

10. Prevention of Significant Deterioration. - Section 109 of the Clean Air Act, 42 U.S.C. § 7409, requires the Administrator of EPA to promulgate regulations establishing primary and secondary national ambient air quality standards ("NAAQS" or "ambient air quality standards") for certain criteria air pollutants. The primary NAAQS are to be adequate to protect the public health, and the secondary NAAQS are to be adequate to protect the public welfare, from any known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air.

11. Section 110 of the Clean Air Act, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a SIP that provides for the attainment and maintenance of the NAAQS.

12. Under Section 107(d) of the Clean Air Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. These designations have been approved by EPA and are codified at 40 C.F.R. Part 81. An area that meets the NAAQS for a particular pollutant is classified as an “attainment” area; one that does not is classified as a “non-attainment” area.

13. Part C of Title I of the Clean Air Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration of air quality in those areas designated as attaining the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision-making process. These provisions are referred to herein as the “PSD program.”

14. Section 165(a) of the Clean Air Act, 42 U.S.C. § 7475(a), prohibits the construction and subsequent operation of a major emitting facility in an area designated as attainment unless a PSD permit has been issued and air pollution control equipment is installed and operated. Section 169(1) of the Clean Air Act, 42 U.S.C. § 7479(1), defines “major emitting facility” for certain listed stationary sources, such as “chemical process plants”, as a source with the potential to emit 100 tons per year (“TPY”) or more of any criteria air pollutant.

15. As set forth at 40 C.F.R. § 52.21(k), the PSD program generally requires a person who wishes to construct or modify a major emitting facility in an attainment area to demonstrate,

before construction commences, that construction of the facility will not cause or contribute to air pollution in violation of any ambient air quality standard or any specified incremental amount.

16. As set forth at 40 C.F.R. § 52.21(i), any major emitting source in an attainment area that intends to construct a major modification must first obtain a PSD permit and install and operate best available air pollution control technology. “Major modification” is defined at 40 C.F.R. § 52.21(b)(2)(i) as meaning any physical change in or change in the method of operation of a major stationary source that would result in a significant net emission increase of any criteria pollutant subject to regulation under Clean Air Act. “Significant” is defined at 40 C.F.R. § 52.21(b)(23)(i) in reference to a net emissions increase or the potential of a source to emit any of the following criteria pollutants, at a rate of emissions that would equal or exceed any of the following: for ozone, 40 TPY of VOC; for CO, 100 TPY; for NO_x, 40 TPY; for PM, 25 TPY; and, for PM₁₀, 10 TPY (hereinafter “criteria pollutants”).

17. As set forth at 40 C.F.R. § 52.21(j), a new major stationary source or a major modification in an attainment area shall install and operate best available control technology (“BACT”) for each pollutant subject to regulation under Clean Air Act that would have the potential to emit in significant quantities.

18. Section 161 of the Clean Air Act, 42 U.S.C. § 7471, requires SIPs to contain emission limitations and such other measures as may be necessary, as determined under the regulations promulgated pursuant to these provisions, to prevent significant deterioration of air quality in attainment areas.

19. A state may comply with Section 161 of the Clean Air Act either by being delegated by EPA the authority to enforce the federal PSD regulations set forth at 40 C.F.R. § 52.21, or by

having its own PSD regulations approved as part of its SIP by EPA, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166. The Nebraska PSD regulations, Nebraska Air Quality Regulations, Title 129, Chapter 7, were approved as part of the SIP. 40 C.F.R. § 52.1420.

20. New Source Performance Standards. – Section 111 of the Clean Air Act, 42 U.S.C. § 7411, requires EPA to promulgate standards of performance for certain categories of new air pollution sources (“New Source Performance Standards” or “NSPS”). Pursuant to Section 111(b), 42 U.S.C. § 7411(b), EPA promulgated general regulations applicable to all NSPS source categories. Those general regulations are set forth at 40 C.F.R. Part 60 Subpart A.

21. EPA’s NSPS regulations applicable to Defendant’s ethanol plant are contained in 40 C.F.R. Part 60, Subparts Kb, and VV.

22. National Emission Standards for Hazardous Air Pollutants (“NESHAP”). The Clean Air Act requires EPA to establish emission standards for each category or subcategory of major sources of HAPs listed for regulation pursuant to Section 112(b)(1), 42 U.S.C. § 7412(b)(1).

23. Under Section 112(a)(1) of the Clean Air Act, 42 U.S.C. § 7412(a)(1), a source is “major” if it has the potential to emit, in the aggregate, 10 TPY or more of any hazardous air pollutants (“HAPS”) or 25 TPY or more of any combination of HAPS. Defendant’s ethanol plant is a “major source” because it has the potential to emit 25 TPY or more of a combination of the following HAPs: acetaldehyde, methanol, and formaldehyde.

24. Major sources of HAPs are required to reduce emissions by the application of maximum achievable control technology (“MACT”) for the control of emissions. 42 U.S.C. § 112(g)(2).

25. Pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), EPA may commence a civil action for injunctive relief and civil penalties for violations of the Clean Air Act, not to exceed \$25,000 per day of violation for violations of the Clean Air Act that occur before January 30, 1997. Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, authorizes EPA to commence an action to assess civil penalties of not more than \$27,500 per day per violation for violations occurring on or after January 30, 1997 through March 15, 2004; and \$32,500 per day for each violation that occurs after March 15, 2004.

FIRST CLAIM FOR RELIEF

PSD and NSR Requirements

26. Paragraphs 1 through 25 are realleged and incorporated by reference.

27. The Defendant's ethanol plant operations result in emissions of significant quantities of criteria air pollutants, including NO_x, CO, PM, PM₁₀, VOCs and a number of HAPS. The primary sources of these emissions are the feed dryers, fermentation units, gas boilers, the cooling cyclone, ethanol load-out operations, and fugitive dust from plant operations, including roads.

28. The Defendant's ethanol plant is a "chemical process plant" in accordance with Section 169(1) of the Clean Air Act, 42 U.S.C. § 7479(1), which defines a "major emitting facility" for certain listed stationary sources as a source with the potential to emit 100 TPY or more of any criteria air pollutant. Defendant's ethanol plant is a major emitting facility with the potential to emit in excess of 100 TPY of VOC, PM, and CO, which are listed criteria air

pollutants.

29. At all times relevant to this Complaint, the Defendant's ethanol plant was and is located in an area that was designated as "Class II" under Section 162(b) of the Clean Air Act, 42 U.S.C. § 7472(b), and that has attained the National Ambient Air Quality Standards for Ozone (of which VOC is a precursor), NO_x, PM, PM₁₀, and CO, under Section 107(d) of the Clean Air Act, 42 U.S.C. § 7407(d).

30. At all times relevant to this Complaint, and on numerous occasions since commencement of operations, the Defendant has failed to fully and accurately identify the emissions of one or more criteria pollutants from its ethanol plant.

31. Since construction of its ethanol plant, Defendant has been in violation of Section 165(a) of the Clean Air Act, 42 U.S.C. § 7475(a), and 40 C.F.R. § 52.21, and the corresponding Nebraska state implementation plan, Nebraska Air Quality Regulations, Title 129, Chapter 7, by failing to undergo PSD review, by failing to obtain all appropriate permits, and failing to install the best available control technology for the control of VOC, CO, NO_x, PM, and PM₁₀ from all feed dryers, fermentation units, distillation units, gas boilers, the cooling cyclone; and fugitive dust emissions from the plant's ethanol load-out operations.

32. Unless enjoined by an Order of the Court, these violations of the Clean Air Act and the implementing regulations will continue.

33. As provided in Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, the Defendant's violations, as set forth above, subject it to injunctive relief and civil penalties not to exceed \$25,000 per day of

violation for violations of the Clean Air Act that occur before January 30, 1997; and up to \$27,500 per day per violation for violations occurring on or after January 30, 1997 through March 15, 2004; and \$32,500 per day for each violation that occurs after March 15, 2004.

SECOND CLAM FOR RELIEF
NATIONAL EMISSIONS STANDARDS FOR
HAZARDOUS AIR POLLUTANTS

34. Paragraphs 1 through 25 are realleged and incorporated by reference.

35. The Defendant's ethanol plant is a major source of HAPs because it has the potential to emit 25 TPY of a combination of the following listed HAPs: acetaldehyde, methanol, and formaldehyde. The primary sources of these emissions are the feed dryers, fermentation units, gas boilers, the cooling cyclone, and ethanol load-out operations.

36. At all times relevant to this Complaint, and on numerous occasions since commencement of operations, the Defendant has failed to fully and accurately identify the HAP emissions from its ethanol plant.

37. Since construction of its ethanol plant, Defendant has been in violation of Section 112(g) of the Clean Air Act, 42 U.S.C. § 7412(g), by failing to install the maximum achievable control technology on all feed dryers, fermentation units, distillation units, gas boilers, the cooling cyclone, and ethanol load-out operations.

38. Unless enjoined by an Order of the Court, these violations of the Clean Air Act and the implementing regulations will continue.

39. As provided in Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, Defendant's violations, as set forth above, subject it to injunctive relief and

civil penalties not to exceed \$25,000 per day of violation for violations of the Clean Air Act that occur before January 30, 1997; up to \$27,500 per day for each violation after January 30, 1997, through March 15, 2004; and \$32,500 per day for each violation that occurs after March 15, 2004.

THIRD CLAIM FOR RELIEF
New Source Performance Standards
Standards Of Performance for Equipment Leaks of VOC in the Synthetic Organic
Chemicals Manufacturing Industry

40. Paragraphs 1 through 25 are realleged and incorporated by reference.

41. Defendant operates a facility for synthetic organic chemical manufacturing which was constructed or modified after January 5, 1981. Defendant's facility is an "affected facility" as defined by Subpart VV, 40 C.F.R. § 60.480, which is subject to the leak detection, monitoring, and repair requirements set forth in 40 C.F.R. §§ 60.482-1 to 60-489.

42. On one or more occasions since April 1995, Defendant failed to accurately monitor the subject VOC valves and other components at its ethanol plant, to report the VOC valves and other components that were leaking, and to repair all leaking VOC valves and other components in a timely manner, in violation of one or more requirements of 40 C.F.R. §§ 60.482-1 to 60-489, and Section 111 of the Clean Air Act, 42 U.S.C. § 7411.

43. Unless enjoined by an Order of the Court, the Defendant's violations of the Clean Air Act and the implementing regulations will continue.

44. As provided in Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, Defendant's violations, as set forth above, subject it to injunctive relief and

civil penalties not to exceed \$25,000 per day of violation for violations of the Clean Air Act that occur before January 30, 1997; up to \$27,500 per day for each violation after January 30, 1997, through March 15, 2004; and \$32,500 per day for each violation that occurs after March 15, 2004.

FOURTH CLAIM FOR RELIEF
New Source Performance Standards
Standards of Performance for Volatile Organic
Liquid Storage Vessels

45. Paragraphs 1 through 25 are realleged and incorporated by reference.

46. Defendant has one or more storage vessels that are “affected facilities” under Subpart Kb, with a capacity greater than or equal to 40 cubic meters that are used to store volatile organic liquids for which construction, reconstruction, or modification was commenced after July 23, 1984, as defined by 40 C.F.R. § 60.110b which is subject to the operational and emission limits, testing, and recordkeeping and reporting requirements set forth in 40 C.F.R. §§ 60.110b to 60-117b.

47. On one or more occasions since April 1995, Defendant failed to comply with the applicable requirements of Subpart Kb, in violation of one or more provisions of 40 C.F.R. §§ 60.110b to 60-117b, and Section 111 of the Clean Air Act, 42 U.S.C. § 7411.

48. Unless enjoined by an Order of the Court, the Defendant’s violations of the Clean Air Act and the implementing regulations will continue.

49. As provided in Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, Defendant’s violations, as set forth above, subject it to injunctive relief and civil penalties not to exceed \$25,000 per day of violation for violations of the Clean Air Act that

occur before January 30, 1997; up to \$27,500 per day for each violation after January 30, 1997, through March 15, 2004; and \$32,500 per day for each violation that occurs after March 15, 2004,

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States, respectfully requests that this Court:

1. Order the Defendant to immediately comply with the statutory and regulatory requirements cited in this Complaint, under the Clean Air Act;
2. Order the Defendant to take appropriate measures to mitigate the effects of its violations;
3. Assess civil penalties against the Defendant for up to the amounts provided in the Clean Air Act; and
4. Grant the United States such other relief as this Court deems just and proper.

REQUEST FOR PLACE OF TRIAL

The United States requests that the trial of this action be held in Omaha, Nebraska, and that the case be calendared accordingly.

Respectfully submitted,

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ACTING ASSISTANT ATTORNEY GENERAL
ENVIRONMENT
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